



PATENT
Attorney Docket No. 104.0004-03000
Customer No. 22882
U.S. Express Mail Label No. EQ071214826US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Confirmation No.: 3765
David F. Meschan)	
Serial No.: 10/735,343)	Group Art Unit: 3728
Filed: December 11, 2003)	Examiner: Ted Kavanaugh
For: ATHLETIC SHOE WITH)	
IMPROVED HEEL STRUCTURE)	

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), applicant brings to the attention of the Examiner the documents listed on the attached Form PTO-1449. This Information Disclosure Statement is being filed concurrently with a Request for Continued Examination (RCE) for the above-referenced application.

Copies of the listed documents are attached.

Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

As set forth in the Information Disclosure Statements dated February 1, 2005 and July 27, 2005, the '300 patent and '471 patent are each the subject of litigation in the United States District Court for the Middle District of North Carolina, Greensboro Division, Case No. 1:03CV01207, hereinafter referred to as Litigation 3. Applicant notes for the Examiner on the attached Form PTO-1449 in the column for the Examiner's initials documents associated with Litigation 3, which are identified by the designation "Lit. 3."

Applicant is submitting, with this Information Disclosure Statement, a copy of a Memorandum Opinion and Order of the U.S. District Court for the Middle District of North Carolina, dated May 17, 2005 (the "May Order"), and a copy of a Memorandum Opinion and Order of the U.S. District Court for the Middle District of North Carolina, dated August 26, 2005 (the "August Order") in Litigation 3. The May Order construes claims of related patents, including U.S. Patent No. 6,662,471, from which this pending application claims priority.

Among the terms construed in the May Order is the term "secured." The court did not construe the term "secured" to have its ordinary meaning. In its reasoning, the Court discussed materials found in the written description of the specification of the '471 patent. Because this application adds no new matter to the specification of the '471 patent, and because the specification of the present application includes the term "secured," Applicant is submitting the May and August Orders with this Information Disclosure Statement to confirm whether the Examiner has given the term "secured" its ordinary meaning in allowing the claims of the present application. It has been Applicant's intent, in this application and in prior applications, for the term "secured" to have its ordinary meaning (i.e., fastened, or attached). Applicant submits that the claims of the present application are not limited to a shoe having a rear sole that is positionable or otherwise moveable.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claim in the application and applicant determines that the cited documents do not constitute "prior art" under United States law, applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: 15 NOV 05

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Substitute for FORM PTO-1449		Attorney Docket Number 104.0004-03000		Customer No. 22882		
INFORMATION DISCLOSURE CITATION IN AN APPLICATION		Applicant David F. Meschan		Application Number 10/735,343		
(Use several sheets if necessary) Sheet <u>1</u> of <u>1</u>		Filing Date December 11, 2003		Group Art Unit 3728	Examiner J. Kavanaugh	
U.S. PATENT DOCUMENTS						
EXAMINER INITIAL	DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
FOREIGN PATENT DOCUMENTS						
	DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION (YES/NO)
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)						
Lit. 3	Memorandum Opinion and Order dated May 17, 2005; Akeva, L.L.C. v. Adidas America, Inc.; Civil Action No. 1:03CV01207.					
Lit. 3	Memorandum Opinion and Order dated August 26, 2005; Akeva, L.L.C. v. Adidas America, Inc.; Civil Action No. 1:03CV01207.					
EXAMINER		DATE CONSIDERED				
EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.						